*THE HON'BLE SRI JUSTICE P.S.NARAYANA

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+ WRIT PETITION No.6921 of 1997

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%Dated 20.01.2005

 # M/s. Laxmi Construction Co., Managing Partner, Sri Y.Gopal Reddy, S/o. Yoganada Reddy.

…….. PETITIONER

$ 1 The Financial Adviser and Chief Accounts Officer,
South Central Railway, Secunderabad
2 The Deputy Engineer,
Gauge Conversion, S.C.Railway, Guntakal, Anantapaur District.

…… RESPONDENTS

! Counsel for the Petitioner: MR.V.NARASIMHA GOUD

^ Counsel for the Respondents: MR.GOURI SHANKAR SANGHI

< GIST:

> HEAD NOTE:

? Cases referred

1. 2003 (6) SCC 465

2. 1996(1) An.W.R. 523 (D.B)

3. 1996 (3) ALD 591

4. 1996 (3) ALD 576

5. AIR 1989 (AP) 140.

6. 1991 (3) SCC 91

7. 1989 (2) SCC 116

8. 1996(4) SUPREME 689

9. 1996 (5) SUPREME 439

10. 1988 II LLN 483

11. AIR 1946 Madras 113=1945 (2) M.L.J 522

12. 1972 (1) An.W.R 235

13. 1987 LAB.I.C. 1152

14. 1976 LAB I.C.732

15. 1997 (2) LLJ (H.C.) MADRAS 568

16. 1997 (2) ALD 602

17. 2000(2) LLJ (H.P.) 500

18. 2000 II LLJ (KERALA) 630

19. 1995(1) L.L.J. (KERALA) 334

20. 1998 L.L.J. (MADRAS) 473

21. 2001 (2) ALD 228 (DB)

22. (1995) III L.L.J.(Suppl) 669 (Guj)

23. (1989) II L.L.J. 114 (Ker)

24. (1995) III L.L.J.(Suppl) 669 (Guj)

25. (1983) II L.L.J.320 (Mad)

26. (1992) I L.L.J. 156 (Bom)

27. (1987) II L.L.J. 311 (Ker)

28. (1999) III L.L.J. (Suppl) 340 (MP)

29. (1997) III L.L.J. (Suppl) 71 (Raj).

30. (1997) III L.L.J. 655 (Ori).

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO: 6921 of 1997

Between:

M/s. Laxmi Construction Co., Hyderabad,

Rep. by its Managing Partner, Sri Y.Gopal Reddy, S/o. Yoganada Reddy, R/o. Hyderabad.

..... PETITIONER

AND

1 **The Financial Adviser and Chief Accounts Officer,**
South Central Railway, Secunderabad
2 **The Deputy Chief Engineer,**
Gauge Conversion, S.C.Railway, Guntakal, Anantapaur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declaring that the order passed by the 1st respondent in Proceedings No. ACN/SAO/I/Bills dated 27-2-1997, ordering for recovery of Rs.50.000/- and also further ordering for recovery of an amount of Rs.65,112/- from the bills of the petitioner company is illegal, unjust, contrary to law and in violation of principles of natural justice; and grant all consequential benefits to the petitioner company.

Counsel for the Petitioner: MR.V.NARASIMHA GOUD

Counsel for the Respondents: MR.GOURI SHANKAR SANGHI

The Court made the following:

HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No. 6921 of 1997

O R D E R:

1. RELIEF PRAYED FOR IN THE WRIT PETITION:-

M/s. Laxmi Construction Company, Hyderabad, represented by its Managing Partner Mr.Y.Gopal Reddy filed this writ petition for issuance of a writ, order or direction, particularly one in the nature of writ of Mandamus declaring the order passed by the first respondent in proceedings No.CAN/SAO/I/Bills dated 27-02-1997, ordering recovery of Rs.50,000/- and also further ordering recovery of an amount of Rs.65,112/- from the bills of the petitioner company, as illegal, unjust, contrary to law and in violation of principles of natural justice and grant all consequential benefits to the petitioner-company and pass suitable orders.

2. IMPUGNED ORDER:-

SOUTH CENTRAL RAILWAY

FA&CAO/C's Office,

Secunderabad.

No.CAN/SAO/I/Bills Dt.27-02-1997

Dy.CE/C/GC/GTL.

Sub:- Recovery of Rs.50,000/- towards Workman Compensation.

* * *

Rs.50,000/- is recovered from M/s.Lakshmi Construction Co. towards Workman Compensation, the same is recovered from the on a/c bill pertaining to NDL-DNC (GC) Section vide Agt.No.43/C40/C/SC/96, dated 15-3-1996 and the balance of Rs.65,112/- may be recovered from the next on a/c bill pertaining to the same Agency.

SAO/C/SC.

Copy to M/s. Lakshmi Construction Co.

Sd/-

Sr.Accounts Officer (C),

S.C., Rly., Secunderabad.

3. FACTS IN NUTSHELL:-

The petitioner-company prayed for the relief specified supra on the ground that the unauthorized and unlawful deductions were sought to be made from the bills towards the payment of compensation without any proper adjudication or determination of the liability by the competent authority under the Workmen's Compensation Act of 1923 (for short 'the Act of 1923').

The petitioner-company, a Railway Contractor, had taken up a Guage Conversion work between Veldurthy and Bhogalu stations in Kurnool District

and it appears that one woman employee by name Parvathamma was hit by the train, sustained injuries and ultimately died. Relating to it, it is stated that in pursuance of the communication received from the Commissioner of Workmen's Compensation, the first respondent issued the impugned order dated 27-02-1997 referred to supra, which had been questioned.

4. PLEADINGS OF THE RESPECTIVE PARTIES:-

It is pleaded in the affidavit filed in support of the writ petition that the petitioner is a company, carrying on construction work and the petitioner-company is a Railway contractor and had taken up guage conversion work between Veldurthy and Bhogalu stations in Kurnool District.

On 08-08-1996, when the guage conversion was in progress, it was informed by the labourers working at the spit that one train came speedily without observing the employees working on guage conversion and one women employee by name Smt.Parvathamma was hit by the train and the said woman fell down and thereby sustained injuries and immediately she was shifted to Kurnool Hospital and after undergoing treatment, she was declared dead.

It is also stated that the second respondent issued a letter dated 18-10-1996, calling upon the petitioner-company to deposit a sum of Rs.1,32,822/- and a reply was given on

28-10-1996 that the petitioner was not liable to deposit any amount and there is

a dispute regarding the accident and the liability of the payment of compensation. It was also further stated that no claim was preferred before the Commissioner for Workmen's Compensation to determine the liability and hence the respondents have no right or authority to deduct any amount from the bills of the petitioner-company. It was further averred that the accident occurred on account of negligence of the respondents and therefore the respondents are alone responsible for payment of any compensation if at all payable under the Act of 1923.

Specific stand was taken inasmuch as no claim had been preferred by the dependents of the deceased employee before the Commissioner for Workmen's Compensation and inasmuch as the liability had not been decided by the competent authority and in view of the stand taken by the petitioner-company, the respondents alone are responsible for causing the accident, and being the principal employer, the respondents alone will be liable to pay the amounts, that too, after determination by the Commissioner for Workmen's Compensation under the Act of 1923. Hence, the deductions are unauthorized and even otherwise unless there is a proper adjudication, the question of workmen's compensation could not arise.

The counter affidavit is filed by taking a specific stand that the writ petition is not maintainable under Article 226 of the Constitution of India for enforcement of the contractual obligations.

It was also specifically pleaded in paras-3, 4 and 5 in the counter affidavit as hereunder:

"In connection with Gauge Conversion Work of Kurnool, Dronachellam Section from MG to BG, M/s.Laxmi Construction Co., Railway Contractors, Hyderabad, were awarded a work for Earthwork Contract Agreement No.92/CAO/C/SC/96 dated 19-06-1996.

On 08-08-1996, While contractor's labour were working at Bridge No.501 at KM.283/4..5, an accident took place when the Passenger Train No.554, from Dronachellam to Kurnool Town hit two of the labourers namely Smt.Parvathamma and Smt.H.Chandramma. Both the injured worker were immediately rushed to the Government Hospital, Kurnool where Smt.Parvathamma was declared dead by the Doctor attending the injured women. The other women Smt.Chandramma was treated for minor injuries and was discharged from the Hospital after few days of treatment.

Inasmuch as it is the responsibility of the Employer to inform any incident of death caused by accident to the Commissioner for Workmen's Compensation, Kurnool, as per section 10-B of the Workmen's Compensation Act of 1923 and Rule 11 of Workmen's Compensation Rule, 1924. This petitioner-company, being the Employer in this case, failed to inform the accident to the Commissioner for Workmen's Compensation, Kurnool. Being the Principal Employer, the Deputy Chief Engineer/Gauge Conversion/South Central Railway/Guntakal reported the accident to the Commissioner for Workmen's

Compensation, Kurnool vide this office letter No.GTL/GC/Misc. dated 16-08-1996. Further, a letter was addressed to the petitioner-company vide this office letter No.GTL/GC/Mis. Dated 05-10-1996 to ascertain and deposit the compensation amount with Commissioner for Workmen's Compensation, Kurnool. On the advice by Commissioner for Workmen's Compenstation, Kurnool, a letter dated 07-10-1996 was issued to the petitioner-company requesting to deposit the amount of compensation of Rs.1,32,022/- with the Commissioner for Workmen's Compensation, Kurnool, followed by reminder dated 18-10-1996. But the petitioner-company refused to comply with the advice and tried to throw blame on Railways vide his letter dated: 28-10-1996.

When repeated reminders from Railways had no effect on the petitioner-company, the Railways was obliged to deposit the compensation to honour the order passed by the Honourable High Court of Andhra Pradesh vide Order No.W.P.Nos.17591/96 and 20446/1996 dated 20-12-1996 amounting for Rs.1,15,512/- as determined by the Commissioner for Workmen's Compensation, Kurnool."

It was further pleaded in para-6 of the counter-affidavit that an agreement entered into between the Railways and the

petitioner/contractor is governed by the conditions of contract. As per para-56 of the General Conditions of the contract. Para-6 of the counter affidavit reads as hereunder:

“The contention and allegation of the Petitioner that accident was caused due to negligence of Railways is totally false and is misleading. An agreement entered into between Railways and the Petitioner/Contractor is governed by the General Conditions of contract. As per para 56 of the General Conditions of Contract, “ The Contractor shall be responsible for the safety of all employees directly or through petty Contractors or Sub-Contractors employed by him on the works.”

It was further pleaded that the Railways action in deducting the amount from running bills is in accordance with the conditions stipulated in the contract and hence the impugned order. It was further pleaded that as per Section 10-A of the Act of 1923, the commissioner on receiving the information of any local accident is empowered to take necessary steps to determine the compensation and as per the procedure, the Commissioner shall intimate the amount of compensation to be paid. It was also further pleaded in para-8 and 9 of the counter-affidavit as hereunder:

“The Dy.Chief Engineer/Gauge Conversion/South Central Railway/Gluntakal, in turn, has advised the petitioner that the amount to be paid. As the petitioner-comkpany consistently refused to agree to pay the amount, the Railways were left with no other option but to pay the amount to the Commissioner for Workmen’s Compensation, Kurnool and later recover the same from the petitioner-company in terms of para 57 of the General Conditions of the Contract.

Notwithstanding what has been stated above, it is submitted that writ is not

maintainable, for enforcing contractual obligations. Recently, a Division Bench of the Hon'ble High Court consisting Chief Justice Sri P.S.Misra and Justice Sri P.Rama Krishnam Raju, held in Writ Appeal No.512/1997, dated 10-6-1997 that one of the settled principles of law is that any obligations which arise out of a contract are ordinarily not dealt within a proceeding under Article: 226 of the Constitution of India. The present petition having arisen out of contract between Railways and the petitioner-company, the same is not maintainable and hence liable to be dismissed."

5. SUBMISSIONS OF SRI J.JAYAPRAKASH RAO:-

Sri J.Jayaprakash Rao, representing the petitioner-company would maintain that the deductions from the bill dated 15-03-1996 and the proposed deductions from the bills are unauthorized and illegal for the reason that the Commissioner for Workmen's Compensation, under the Act of 1923, had never decided this dispute and in the absence of the same, the impugned proceedings cannot be sustained. The learned counsel also would maintain that inasmuch as the said deductions are illegal and unauthorized and being arbitrary action of public authority, the writ petition is maintainable. The learned counsel also would submit that the petitioner-company is not a party to the proceedings said to have been filed for the payment of amount. The learned counsel for the petitioner-company, while elaborating the submissions, had taken this Court through the respective pleadings of the parties. The learned counsel for the petitioner-company, to substantiate his contentions that there is no adjudication of claim at any point of time by the competent Authority, relied upon the

correspondence between the parties. He also relied upon certain decisions in support of his case.

6. SUBMISISONS OF SRI GOWRI SANKAR SANGHI:

Sri Gowri Sankar Sanghi, learned Standing Counsel for Railways, would contend that the matter is concerned with a contract simplicitor and in view of the arbitration clause and also other clauses, authorizing recovery in the General Conditions, the writ petition itself is not maintainable. The learned standing counsel also had pointed out that the intimation had been given by the Railways under the advise of competent authority, the Commissioner under the Act, bringing to the notice of the petitioner-company. But, the petitioner-company was not interested in complying with or satisfying the liability, and, inasmuch as the Railways had parted with the said amount, they are definitely entitled to recover the same from the bills as per the terms of the contract. The Standing Counsel also would maintain that the contract is commercial contract and the parties are bound by the terms and conditions of the contract. The Standing Counsel contends that the negligence is not on the part of the Railways and is on the part of the contractor, and hence, the contractor, cannot escape from the liability. The learned Standing Counsel also would submit that this being statutory liability and is discharged by the Railways in view of the order of the Court, the contractor has to indemnify the same, and, on failure to indemnify, the Railways are entitled to deduct the amount from the bills. The procedure specified under the provisions of the Act of 1923, need not be followed inasmuch as parties are governed by the terms and conditions of the

contract as such. The learned Standing Counsel also had taken this Court through Sections 10, 10-A, 10-B and 12 of the Act of 1923 and Rule 11 of the Rules of 1924.

7. RELEVANT STATUTORY PROVISIONS AND RULES:-

The Act No.8 of 1923 is an Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Chapter-II deals with 'Workmen's Compensation'. Section 3 of the Act of 1923, deals with the employer's liability for compensation, which reads as hereunder:

> " **Sec.3. Employer's liability for compensation:-** (1) If personal is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in according with the provisions of this Chapter:
>
> Provided that the employer shall not be so liable-
>
> a. in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [three days].
>
> b. in respect of any [injury, not resulting in death [or permanent total disablement] caused by] an accident which is directly attributable to-
>
> i. the workman having been at the time thereof under the influence of drink or drugs, or
>
> ii. the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or
>
> iii. the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman, [x x x],
>
> iv. [x x x].
>
> [(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational

disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as a Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course, of the employment:

[Provided that if it is proved,-

a. that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

b. that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupation disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]

[(2-A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

(3) [The Central Government or the State Government] after giving, by notification in the Official Gazette, not less than three month's notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purpose of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply [in the case of a notification by the Central Government, within the territories to which this Act extends, or, in case of a notification by the State Government within the State] [xxx] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by [sub-sections (2), (2-A) and (3)] no compensation shall be payable to a workman in respect of any disease unless the disease is [xxx] directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury-

a. if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

b. if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

Section 10 of the Act of 1923 deals with 'Notice and Claim', which reads as hereunder:

" **Section 10. Notice and claim:-** [No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within [two years] of the occurrence of the accident or, in case of death within [two years] from the date of death]:

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of Section 3 are applicable, the

accident shall be deemed to have occurred on the first of the day during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in the employment for a continuous period, specified under sub-section (2) of Section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertaining of a claim]—

a. if the claim is [preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

b. if the employer [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] had knowledge of the accident from any other source at or about the time when it occurred]:

Provided further that the Commissioner may [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been [preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or [prefer] the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon (any one of) several employers, or upon any person (x x x) responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at the reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or where a notice-book is maintained, by entry in the notice-book.)"

Section 10-A of the Act of 1923 deals with 'power to require from employers' statements regarding fatal accidents;-

"**Section 10-A. Power to require from employers statements regarding fatal accidents:-** (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit."

Section 10-B of the Act of 1923 deals with 'Reports of fatal accidents and serious bodily injuries', which reads as hereunder:

"**Section 10-B. Reports of fatal accidents and serious bodily injuries:-** (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death (or serious bodily injury), the person required to give the notice shall, within seven days of the death

(or serious bodily injury), send a report to the Commissioner giving the circumstances attending the death (or serious bodily injury):

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice."

Section 12 of the Act of 1923 deals with 'Contracting', and specifies as hereunder:-

"Section 12: Contracting:- (1) Where any person 9hereinafter in this section referred to as the principal] in the course of or for the purposes of his trade or business contract with any other persons (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employee in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of the compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation], and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3).....

(4)....."

Chapter-III deals with 'Commissioners'. Section 19 deals with 'Reference

to Commissioner' which reads as hereunder:

> **"Section.19:- Reference to Commissioner:-** (1) If any question arises in any proceeding under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by [a Commissioner].
>
> (2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act."

Section 22 of the Act of 1923 deals with 'Form of application', which reads as follows:-

> **"Section 22:- Form of application:-** [(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.
>
> (1-A) Subject to the provisions of sub-section (1), no application for the settlement.] of any matter by a Commissioner [other than an application by a dependant or dependants, for compensation] shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.
>
> (2) [An application to a Commissioner] may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:
>
> a. a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
>
> b. in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served in due time, the reason for such omission;
>
> c. the names and addresses of the parties; and
>
> d. [except in the case of an application by dependants for compensation] a concise statement of the matters on which agreement has

and [of] those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner."

Section 23 of the Act of 1923 deals with 'Powers and procedure of Commissioners', which reads as hereunder:-

"Section 23. Powers and procedure of Commissioners:- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of [Section 195 and of chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]."

Section 24 of the Act of 1923 deals with 'Appearance of parties' and Section 25 of the Act of 1923 deals with 'Method of recording evidence'

In exercise of the powers conferred by Section 32 of the Workmen's Compensation Act of 1923 (8 of 1923), the Workmen's Compensation Rules of 1924 (for brevity 'the Rules of 1924) had been framed. Part-3 of the Rules of 1924 deals with 'Reports of Accidents'. Rule 11 of the Rules of 1924 deals with 'report of fatal accidents' which reads as hereunder:

"Rule 11. Report of fatal accidents:- The report required by Section 10B shall, subject to such rules, if any, as may be made by the State Government, be in Form EE."

Rule 12 of the Rules of 1924 deals with 'right of employer to present

memorandum when information received' which reads as hereunder:

> **"Rule 12. Right of employer to present memorandum when information received:-** (1) Any employer who has received information of an accident may, at any time, notwithstanding the fact that no claim for compensation has been instituted in respect of such accident, present to the Commissioner a memorandum, supported by an affidavit by himself or by any person subordinate to him having knowledge of the facts stated in the memorandum, embodying the results of any investigation or enquiry which has been made into the circumstances or cause of the accident.
>
> (2) A memorandum presented under sub-rule (1) shall, subject to the payment of such fee as may be prescribed, be recorded by the Commissioner."

Part-5 of the Rules of 1924 deals with 'Procedure'. Rule 19 of the Rules of 1924 deals with 'Introductory'. Rule 20 of the Rules of 1924 deals with 'Application'. Rule 21 of the Rules of 1924 deals with 'Production of documents'. Rule 22 of the Rules of 1924 deals with 'Application presented to wrong Commissioner'. Rule 23 of the Rules of 1924 deals with 'Examination of applicant'. Rule 24 of the Rules of 1924 deals with 'Summary dismissal of application'. Rule 25 of the Rules of 1924 deals with 'Preliminary inquiry into application'. Rule 26 of the Rules of 1924 deals with 'Notice to opposite party'. Rule 27 of the Rules of 1924 deals with 'Appearance and examination of opposite party'. Rule 28 of the Rules of 1924 deals with 'Framing of issues'. Rule 29 of the Rules of 1924 deals with 'Power to postpone trial of issues of facts where issues of law arise'. Rule 30 of the Rules of 1924 deals with 'Diary'. Rule 31 of the Rules of 1924 deals with 'Reasons for postponement to be recorded'. Rule 32 of the Rules of 1924 deals with 'Judgment'.

8. MAINTAINABILITY OF THE WRIT PETITION:-

Submissions, at length, were made on the very maintainability of the writ petition on the ground that these deductions are the proposed deductions sought to be made by the Railways would fall under the contractual obligations of the ordinary contract and hence, the writ petition itself is not maintainable. Further, submissions were made that in view of the arbitration clause and also specific conditions, even otherwise, the parties are bound by the contract only and even in this view of the matter, the writ petition is not maintainable. Strong reliance was placed on paras 56 and 57 of the General Conditions of contract in this regard which had been already referred to supra. The petitioner-company by letter dated 28-10-1996 in reply to the letter, dated

18-10-1996 had taken the following stand:

"Dated: 28-10-1996.

To

The Deputy Chdief Engineer,

Gauge Conversion, S.C.Railway,

Guntakal-515 801,

Anantapur District.

Sri,

Ref:- Your letter No.GTL/GC/Misc. dated
18-10-1996.

* * *

I am to inform you that I am not liable to deposit any amount as advised by you vide above letter dated
18-10-1996. I further state that there is a dispute with regard to the accident and also liability of payment of the compensation. When there is a dispute, only the Commissioner for Workmen's Compensation has to determine the liability, and therefore, you have no right or authority to deduct any amount from by bills. In spite of this reply, if you are making any deductions, you are doing so on your own risk and I am entitled to seek appropriate legal steps, holding the Railway administration responsible.

2. I have undertaken the job of gauge conversion duly executing a contract. I further state that on 8-8-1996, when the work was in progress, it was informed by the labourers working at the spot that one train has come speedily without observing the employees working on gauge conversion, and it is also further informed by the workers that the foot-step of the training compartment hit Smt. Parvatamma, wife of Timmanna and she fell down and thereby sustained injuries and she was immediately shifted to the Kurnool Hospital where, after undergoing treatment, she was declared dead.

3. I further submit that it was due to the negligence of the Railway administration the accident took place, and therefore, the Railway authorities are solely responsible for payment of compensation to the labour engaged by me. In spite of this reply, if any action is initiated, I am at liberty to take appropriate steps, holding the Railway administration responsible in this regard.

Thanking you,

Yours faithfully,

Sd/-

(Y.GOPAL REDDY)

Managing Partner.

M/s.Lakshmi Construction Company,

Railway Contractors, 8-3-681/1, B-1,

G.V.R.Towers, Navodaya Colony,

Yellareddyguda, Hyderabad-500 073.

From the stand taken by the learned counsel for the petitioner-company, it is

clear that the contention of the petitioner is that the liability if any, to pay the compensation amount arose due to the negligent act of the Railways and the Railways alone, if at all liable to pay any compensation, may have to pay the same and the contractor is no way liable to pay the same.

On the contrary, the learned Standing Counsel for Railways contended that it is not in dispute or controversy that the question of liability had not been decided by any competent authority and no claim had been made by the dependents of the deceased and no adjudication of claim by the competent authority had been made in accordance with the provisions of the Act of 1923 and the Rules of 1924. But, in pursuance of the intimation given by the Commissioner, the Railways, having parted with the said amount from the petitioner, is entitled to recover the same.

The specific stand taken by the petitioner-company is that in the event of the claim of the indemnity, unless the provisions of Section 12(2) of the Act are satisfied, Railways cannot straight away proceed with such illegal and unauthorized deductions. In other words, the stand of the petitioner-company is that if the amount is unlawfully deducted by the Railways under the contract, contrary to the provisions of the statute, the remedy under public law domain is available to the petitioner-company. In ***STATE OF ORISSA AND OTHERS v. GOKULANANDA JENA***, it was held that appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. But since all areas of dispute including appointment of the arbitrator himself,

can be addressed by the arbitrator appointed by the Designated Judge, the power of writ Court cannot be exercised when such alternative remedy exists.

In ***UNION OF INDIA, REP.BY GENERAL MANAGER, SOUTH CENTRAL RAILWAYS & OTHERS v. MOHAN ENTERPRISES***,

a Division Bench of this Court held that where pleas raised by the parties can be considered by the arbitrator, the writ petitioner can file a suit or seek arbitration of his claim.

In ***PADMAVATHI CONSTRUCTIONS v. A.P.INDUSTRIAL INFRASTRUCTURE CORPORATIION LTD.,*** it was held that:

> "It is apparent that the relationship between the petitioner and the respondent is governed by a Contract which is for certain construction works entrusted by the Respondent Corporation to the petitioner. The relationship between the parties is thus governed by a written contract dated 30.07.1994. It is noteworthy that neither any fundamental right of the petitioner is claimed to have been violated nor constitutionality of any statute or statutory provision is involved for determination in this Writ petition. The contract is a non-statutory provision is involved for determination in this Writ Petition. The contract is a non-statutory contract though one of the contracting parties – respondent in the instant case, it may be assumed for the purpose of this Writ Petition to be a State within the meaning of the Articles 12 and 226 of the Constitution of India, the question, however is, can this Court in exercise of its jurisdiction under Article 226 of the Constitution of India entertain questions relating to contractual obligations. The dispute in the instant case is one arising from General Law of Contract i.e., where reliefs are claimed on the basis of general law of Contract, a Suit filed in Civil Court would be the appropriate remedy. Further more in the instant case, admittedly there exists an Arbitration Clause. Therefore, the petitioner has an additional efficacious alternative remedy if the petitioner so chooses to have the matter or the dispute settled by arbitration. To my mind, invocation of the extra-ordinary of this Court under Article 226 of the Constitution of India is not appropriate. The dispute between the petitioner and the respondent is one arising out of a contract qua contract and can thus be adjudicated either in a properly constituted Civil Suit or by resort to Arbitration."

In ***P.SRINIVAS RAO v. SUPERINTENDING ENGINEER, GUNTUR ,*** it was held that:

> "The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law filed."

Reliance was also placed on

N.T.P.C.Ltd. v. M/s.Bhanu Construction Co. P. Ltd., Hyderabad.

G.B.Mahajan v. Jalgaon Municipal Council

B.D.A. v. Ajai Pal Singh

In ***TAMIL NADU ELECTRICITY BOARD & ANOTHER v. RAJU REDDIAR & ANOTHER ,*** it was held that where there is a written agreement parties are bound by the agreement.

In ***BHARATHI KNITTING COMPANY v . DHL WORLDWIDE EXPRESS COURIER DIVISIION OF AIRFREIGHT LTD.***, it was held that when there is a specific term in the contract, parties are bound by the same.

Submissions at length were made by the learned standing counsel for the Railways appearing for the respondents that inasmuch as in the light of the

conditions specified in the General Conditions, the parties are governed by the terms and conditions of the contract and this being only an ordinary commercial contract, concerning contractual obligations, the writ petition is not maintainable.

There cannot be any quarrel or controversy relating to the proposition that where the parties are governed by the terms and conditions of an ordinary contract and in relation to the resultant obligations, normally, the writ petition cannot be maintained.

However, in the present case, the unlawful, unauthorized or illegal deductions from the bills, contrary to the provisions of the statute, without any adjudication, had been questioned. The petitioner-company's stand is that the death was due to the negligent act of the Railways and the Railways, the principal employer, contends otherwise. It is needless to say that this is a question, which may have to be decided by the competent authority under the Act of 1923. Unless the ground of indemnification relating to the payment is established in accordance with Section 12(2) of the Act, the deductions would be unauthorized and contrary to the statute. Where a public authority acts contrary to the statute and makes deductions which are unjust and not permitted by law, the remedy under Article 226 of the Constitution of India can be invoked. This action is not only arbitrary but also otherwise than the procedure contemplated by law and on the ground that this question would not fall within the ambit of public law and is governed by the commercial contract and not statutory contract, petitioner cannot be driven to invoke the arbitration

clause or any other like remedy. Hence, in such a case, when public authority acts contrary to the statute and makes deduction not authorized by law, the remedy under Article 226 of the Constitution of India can be invoked and any other view, would be unjust, especially in the light of the language employed in Article 226 of the Constitution of India itself.

9. FINDINGS AND CONCUSION:-

The factual matrix narrated supra needs no repetition. Section 12 (2) of the Act of 1923 specifically says as follows:

> **"Sub-section (2) of Section 12:-** Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation], and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner."

Sub-section (3) of Section 12 of the Act further clarifies the situation to the effect that nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

For the purpose of claiming indemnification, the procedure specified under Section 12 of the Act of 1923 may have to be followed. Sub Section (3) of Section 10-A specifically says as follows:

> "If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability."

Sub Section (4) of Section 10-A specifically says as follows:

> "Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit."

It is no doubt true under Sub-section (1) of Section 10-B, the proviso specifies as follows:

> "Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death (or serious bodily injury), the person required to give the notice shall, within seven days of the death (or serious bodily injury), send a report to the Commissioner giving the circumstances attending the death (or serious bodily injury):
>
> Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice."

In ***TRIVEEDHI PEERAYYA v. EXECUTIVE ENGINEER*** , the appellant was a contractor for construction of a portion of project.

A female worker engaged by him in the project died of electrocution. Her husband preferred a claim under the Workmen's Compensation Act. The Commissioner held the contractor is liable for the payment of compensation.

The project authorities paid the compensation and deducted the amount of compensation from out of the bills payable to the appellant-contractor. The appellant-contractor filed the instant appeal against the order of the

Commissioner.

Thus the question is whether the deduction made by the project authorities from the dues payable to the appellant is justifiable or not. It was held that:

> "The project authorities, being the principals were primarily liable under S.12(1) of the Workmen's compensation Act of 1923, subject to their seeking reimbursement from the contractor under S.12(2). It was not open to them to straightway deduct the compensation amount from the bills payable to the appellant."

I n ***MADINA SAHEE v. PROVINCE OF MADRAS*****,** it was pointed out by Rajamannar, J that an order awarding compensation was distinct and different from an order allowing or disallowing a claim for indemnity for the amount of compensation paid. The fact that the Government has assumed the liability as the principal employer and paid the compensation does not *ipso facto* entitle it to initiate the process of indemnification, without adjudication by the Commissioner for indemnity.

In ***SRINIVASARAO v. COMMR. FOR WORKMEN'S COMPENSATION*****,** it was held that withholding of the amount in such a situation lacks legal sanction and the right to claim indemnity can be enforced only when there is an adjudication by the commissioner because the employer has disputed his liability to indemnify the principal employer.

Reliance was also placed on the decision of a Division Bench in ***K.S.E.BOARD V. M/S.SUNDARAM ESTATE*** .

In ***G.SREEDHARAN V. M/S.HINDUSTAN IDEAL INSURANCE CORPORATIOIN LTD. ,***

a Division Bench of this Court, at para-16, held that:

> "Section 12 (1) entitles the injured workman or the dependants of a deceased workman to claim compensation against the principal although the injured or deceased workman, as the case may be, was actually employed by the contractor who had undertaken to execute the work or job of the principal. The liability to pay compensation for the personal injury caused to the workman by accident arising out of and in the course of his employment is fastened statutorily on the principal. For the purpose of claiming compensation under the Act, the principal is deemed to be the employer of the concerned injured workman. It is pertinent to notice that the principal must have engaged the contractor in the course of or for the purpose of his trade or business for the execution of the whole or any part of his work, in order to attract the provisions of section 12(1). But, however, the amount of compensation payable by the principal has to be calculated with reference to the wages of the workman under the employer by whom he is immediately employed. The provisions of section 12 would not come into play where the accident occurs elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes to execute the work or which are otherwise under his control or management. The legislature has thought fit and proper to make primarily the principal liable to pay compensation to the workman, perhaps on account of the better status and financial stability of the principal than that of his immediate employer. However, the choice lies with the injured workman or the dependants of a deceased workman to proceed against the principal or the contractor or subcontractor. There is no statutory prohibition under Section 12 preventing a workman from recovering compensation from the employer instead of the principal. Section 12 is enacted only to provide for cases where there are contractors or intermediaries between the principal and the injured or deceased workman in the execution of the work of the principal, section 12 has no application at all. The injured workman or dependants of a deceased workman can claim compensation against the employer as per the provisions of section 3. The question of paying indemnity by the insurance company to the assured does not arise under Section 12 (2) of the Act. It is only the principal or the contractor who had to pay compensation to the injured workman or the dependants of the deceased workman, on the application of the provisions of section 12 (1) of the Act, that is entitled to claim indemnity under sub-section (2) to section 12. The actual liability to pay compensation to an injured workman is on the immediate employer of such workman. Whoever pays for and on behalf of such employer by virtue of the statutory provisions of section 12 (1) would be entitled to be indemnified under sub-section (2) thereof. In the case on hand, there is no contractor of sub-contractor. The appellant is the employer of the deceased workman. Admittedly, the deceased Apparao died in the accident while he was actually discharging his duties as a cleaner. The appellant is liable to pay compensation under

section 3. The dependants of the deceased workman have filed an application before the commissioner for application before the commissioner for compensation against the appellant employer only. The insurer was not made a party respondent by the dependants of the deceased workman in the main application before the commissioner claiming compensation. Hence, the provisions of section 12 (2) are not attracted."

In **THE ASST. DIR., ANNA PANNAI & Anr. Vs. ANDI & Anr. ,** it was held that:

"The principal employer is made liable even in respect of the worker engaged under the contractor if the work entrusted with the contractor is connected with the trade or business of the principal employer."

In ***M.VEERANJANEYULU v. SOMA SEETHARAMAIAH*** , it was held at para-7 that:

"On a deep probe into the matter, there appears to be all the force in the contention of the learned Advocate for the Appellant. Section 3 of the Act deals with the employer's liability for compensation under the circumstances enumerated in the provision to be paid to the dependents of the injured/deceased workman and Section 4 deals with the amount of compensation to be determined by the Commissioner and Section 4-A deals with compensation to be paid within a particular time and penalty for default. These provisions have nothing to do either with the apportionment of the compensation or apportionment of liability in paying the compensation. Because, Section 8 of the Act deals with the distribution of compensation. In regard to the liability of the employer, Section 3 itself imposes an obligation on an employer to pay the compensation as directed by the Commissioner. Section 3 has nothing to do with the determination of liability of any other person apart from the employer. But Section 12 of the Act deals with the obligation of parties to the contract in case of payment of compensation to a workman or the dependants. Sub-clause (1) of Section 12 of the Act makes the contractor liable along with the principal to pay the compensation, if so ordered. Sub-clause(2) of Section 12 makes the principal liable to pay the compensation, however subject to indemnification by the contractor, regarding which all the questions as to the right to and amount of any such indemnity shall be settled by the Commissioner. Sub-clause (3) of Section

12 leaves open an option to the workman (including the dependants) from recovering the compensation from the contractor instead of the principal. The sum and substance of these provisions, if read with Section 3 of the Act, means that if the Commissioner determines and directs payment of compensation under Section 3 of the Act, the employer and the principal will be liable in addition to the contract, however, with the option to the claimants to seek recovery of the compensation either against one or both of them. But sub-clause (2) of Section 12 if properly read within the following words would bring out the clear meaning that the determination of question of indemnity by the learned Commissioner is quite independent of determination of compensation and directing payment to the claimants under Section 3 of the Act:

> "12(2): Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor (or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation) and all questions as to the right and the amount of any such indemnity hall in default of agreement be settled by the Commissioner".

On the face of it, such a liability of indemnification on the part of the employer or principal shall be, in the absence of a contract to the contrary. Patently it requires basic facts to determine the nature, the extent and the legality of the liability of the indemnity to be fastened on the contractor to indemnify the employer from paying the compensation.

As the very provision implies an agreement to the contrary, meaning thereby, that the employer and the contractor may agree in regard to the nature, extent and the limits of liability to indemnify. In other words, such questions arise out of the plea and the denial. The Commissioner, to assume jurisdiction without the jurisdictional facts to determine such facts to determine such questions appears to be beyond the scope of the provision. That is what the High Court of Kerala in Executive Engineer's case, in Para 3 held as follows:-

> "….. It is true that in default of agreement, it is both the right and duty of the Commissioner to settle all questions as to the right to and the amount of any such indemnity. Even so, due regard having had to the wording of sub-section 2 of Section 12 of the Act, we find it difficult to agree with the argument of the Government Pleader, that the Commissioner is under a statutory obligation to decide such questions even when neither of the parties raised that question, and there was no issue before him. It appears to us that the true import of the wording in

sub-section 2 of Section 12 of the Act is that, in default of agreement, where any question as to the right to and the amount of indemnity is raised by all or any of the parties to the proceedings, it is for the Commissioner to settle such questions. It would be unreasonable to construe that the statute lays down an obligation on the part of the Commissioner to decide *suo motu* a question the parties before him were not interested in raising."

Having due regard to the true and correct implications of the provisions supra, this Court respectfully agrees with the High Court of Kerala as above. In *Mulla Madina Saheb's* case (2 supra), the question relating to the liability of indemnification under Section 12(2) of the Act was considered. It was held therein that an order awarding compensation was distinct and different from an order allowing or disallowing a claim for indemnity for the amount of compensation paid and an order holding the principal liable to pay compensation under Section 12(1) did not give the principal an absolute right to claim indemnity from the contractor under Section 12(2). It was further held that Section 12(2) gave the Commissioner jurisdiction to decide all cases of disputed right to indemnity and the dispute between the Government and contractor came within Section 12(2) and as it was the Government which claimed a right of indemnity, it was for the Government and not the contractor to move the Commissioner to have the right adjudicated upon under Section 12(2). This Court respectfully agrees with such a view having due regard to such an implication of law under the provision. It may be concluded that the Commissioner cannot *suo motu* determine the question of indemnification by a contractor to the employer or the principal in regard to the payment of compensation under Section 3 of the Act and Section 4-A of the Act unless such a question is raised by necessary pleading and necessary facts either as a part of the proceedings under Section 3 of the Act or independently by separate proceedings giving opportunity to the contractor or the party against whom such liability of indemnification as such has to be mulcted and after holding an enquiry into such questions and by passing appropriate orders in accordance with the said provision and not otherwise. In the present case, the order of the learned Commissioner issuing directions to Opposite party No.3 to indemnify Opposite party Nos.1 and 2 regarding the compensation to be paid to the claimants is beyond the scope of Section 12(2) of the Act and patently illegal and requires to be set aside. However, this shall not be taken as an expression that Opposite party Nos.1 and 2 are debarred from seeking such reliefs quite independent of the present proceedings, if law permits."

In ***H.P. STATE FOREST CORPN. LTD. Vs. VIMALA DEVI,,*** it was held at paras-16, 17 and 19 that:

"In the circumstances, we are of the view that Section 12 of the Act is applicable to the facts of the case on hand and there cannot be any doubt about the legal position that the second opposite party i.e. appellant-Corporation is also liable to pay compensation payable under the Act to the workman even if workman was engaged actually only by the second opposite party i.e. respondent-Contractor.

Section 12(2) in unambiguous terms confers a right on the principal who is made liable to pay compensation under the said section to get himself indemnified by the contractor. As such we would hold that the second opposite party-appellant Corporation as principal employer will be entitled to be indemnified by the respondent-contractor by virtue of Section 12(2) of the Act. We say so because in this case the second opposite party appellant-corporation has specifically contended that as per clause 16 of the agreement entered into between the Corporation and the contractor, the contractor has expressly undertaken the responsibility for payment of compensation to the labour employed by him.

We do not think that there is any merit in the contention of the learned counsel for the appellant-Corporation that in the light of the contract entered into between the two opposite parties regarding the liability to pay compensation as per clause 16 of the agreement and that clause will override the provisions of
Section 12. The avowed object with which Section 12 was enacted as part of the Act as seen is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. If these were the avowed objects with which Section 12 of this Act was incorporated in an enactment which itself is a beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(1) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. At best agreements or contracts entered into between the principal and contractor can govern only their *inter se* rights and liabilities and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor."

In ***MALANKARA RUBBER & PRODUCE Co. LTD. Vs. HAMEED ,*** where the work by contractor for expansion of factory building in premises of

principle employer and the expansion being connected with latter's, principal employer was held to be liable to pay compensation for the death of workman engaged by the contractor.

In ***K.KOODALINGAM Vs. S.E. & ORS.,*** a Division Bench of Kerala High court at Paras-10 and 11, held that:

> "Section 12(2) in unambiguous terms confers a right on the principal who is made liable to pay compensation under the said Section to get himself indemnified by the contractor. As such, we would hold that the first opposite party as principal will be entitled to be indemnified by the contractor by virtue of Section 12(2) of the Act and to recover the amount of compensation, if any paid to the workmen, from the second opposite party in execution of the orders passed in the two cases itself. We say so because in this case the first opposite party has specifically contended that as per clause 15 of the agreement entered into between the department the contractor, the contractor has expressly undertaken the responsibility for payment of compensation under the Act and the court as per the impugned order has accepted the above contention and held the second opposite party exclusively liable to pay the compensation found due. Though notice was issued to the second opposite party, he has remained *ex parte* before the court below and in this Court. In the circumstances, we would hold that the first opposite party is entitled to recover the amounts, if any, paid to the appellants in the two cases from opposite party No.2 by way of indemnity.
>
> We do not think that there is any merit in the contention of the learned Government Pleader that in the light of the contract entered into between the two opposite parties regarding the liability to pay compensation under the Act. Section 12 cannot be applied in the case to fasten liability for payment of compensation under the Act on the first opposite party. The avowed object with which Section 12 was enacted as part of the Act as seen from the Report of the Select Committee is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. The Report of the Select Committee would also show that while finalizing the provision the Committee has eliminated the provision, which in the Bill as introduced exempted the Government and local authorities from liability imposed by this clause. The Committee has observed that these authorities are liable just in the same manner as private individuals. If these were the avowed objects with which Section 12 of the Act was incorporated in an enactment which itself is a

beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(1) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. So long as the Section has not been made specifically subject to any contract to the contrary, the Section would have application in all cases where the conditions specified in the Section are satisfied. The fact that no *non obstante* provision is used in the Section may not be a sufficient reason to exclude the application of the Section to cases where the conditions are satisfied. At best, agreements or contracts entered into between the principal and contractor can govern only their *inter se* rights and liabilities and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor stipulating the liability under the Act. Accordingly, we would reject the contention of the learned Government Pleader."

In ***CENTURY CHEMICALS & OILS PVT. LTD. Vs. E. MARAGATHAM & ORS ,*** while dealing with Section 12 (1) of the Act of 1923, it was held that principal (employer) would be liable to pay compensation to workman of contractor for execution of principal employer's work.

In **BALA MALLAMMA v. REGISTRAR, OSMANIA UNIVERSITY, HYD.,** it was held that:

" This judgment reiterates a principle of interpretation and the principle is that the meaning of the word must be gleaned from the context in which is used. Meaning assigned to a word in a particular Act may mean one thing and the meaning of the same term may give a different meaning when used in a different Act. Therefore, the word 'trade' or 'business' as used in this Act have to be understood in the context in which this Act has been enacted. Basically the Act has been enacted to provide compensation to the workers suffering during the course of employment. It is also the purpose of the Act that they should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the

provisions are kept in mind, then the word 'trade' or 'business' may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute. If the plea of the University is accepted that they are engaged in imparting education, conducting examinations and conferring degrees only and cannot be termed to be doing any business or trade and hence they are not liable to pay compensation, they any person engaged for similar activity by any government Department, any University, any hospital if faced with an accident, would not be able to get compensation in terms of Section 12 of the Act although such a person would be a workman under the Act. Similarly if an individual who wants to construct a residential house of his own engages a person for construction of the house and if such a person faces an accident during the course of the building of the house, he would be remediless under the Act. Even otherwise the normal activity of the University is imparting education, conducting of examinations and conferring degrees, this they cannot do without having proper buildings. In a similar case where PWD had engaged contractors for the purpose of construction of bridges and roads and an accident occurred and a worker died, the contentions raised before the Jammu and Kashmir High Court in *Public Works Department V. Commissioner, Workmen's compensation,* 1981 LAB IC 493, were also raised before this Court. Para 7 of the judgment is reproduced below:

"The only object behind the provisions of Section 12 appears to be to secure speedy payment of compensation resulting from injuries to a workman. The Legislature intended to make doubly sure payment of such compensation to the workman, or to his dependants in the event of his death, as it could not exclude the possibility of the contractor being in some cases a man of straw, whose straitened circumstances might jeopardize the changes of recovery of such compensation. If, therefore, a restricted meaning is given to the word "business" so as to imply an activity with the object of earning profit only, the object of earning profit only, the object behind Section 12 is likely to be defeated. Not only to speak of the government performing its various functions of a welfare State, even many other persons may have to be kept out of the purview of Section 12 by assigning such a limited meaning to the word "business" occurring in it. Such an interpretation would absolve from liability to pay compensation even a person who would appoint a contractor for building his residential house, as building one's residential house cannot be said to have the object of earning profit or gain behind it. It cannot, as such, be said to partake of "business" or "trade" in commercial sense. Merely because the word "business" is clubbed with the word "trade" in Section 12, it should not be inferred that it has been used in simple commercial sense. Both these words have to be read disjunctively and not conjunctively. Similarly, the doctrine of immunity attached to sovereign acts of State cannot be extended to acts like constructing roads or bridges, as such acts are not of such a nature as cannot be done by a private person.

> Viewed thus, the word "business" occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention, or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. It is one of the meanings given to the word "business" in dictionary. (See *Webster's* New International Dictionary, Vol. I, Ed.1926). Construction of roads being one of the principal concerns of the Public Works Department of the government inviting its serious attention, it is "business" within the meaning of Section 12 and the appellant was thus the principal employer *vis-à-vis* the deceased labourers. With utmost respect to the learned Judge, if I amy say so, I am unable to agree with the view taken by him in *Y.Srinivasa Rao's* case (1972 ACJ 398) that "business" means and includes only that activity which is aimed at earning profit. Such an interpretation, as already observed, is bound to destroy the very raison *d'etre* of Section 12. On the other hand, I am in respectful agreement with the view taken by the High Court of Punhjab in *M/s. Sardara Singh v. Sub Divisional Officer, Chanpur,* AIR 1963 Punj. 217, and *Gopal singh and Sundar Singh v. Punjab State and others,* AIR 1955 NUC (Punj) 4976, that in such cases even Government can be made liable to pay compensation as principal employer under Section 12. To this extent, therefore, the impugned award is not open to question."

In **KOLI MANSUKH RANA V. PATEL NATH RAMJI. ,** Section 12 of the Act of 1923 had been well explained. The scope and ambit of Section 12 of the Act of 1923 and applicability thereof also had been considered in the under noted cases.

1. **TRAVANCORE DEVASWOM BOARD v. URUSHOTHOMAN**

2. KOLI MANSUKH RANA v. PATEL NATHA RAMJI

3. EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT, DINDIGUL v. SUBBAIAH NAICKER.

4. SARJERAO UNKAR JADHAV v. GURINDAR SINGH.

5. **KERALA STATE ELECTRICITY BOARD v. UNDARAM ESTATE**

6. ADMINISTRATOR Of INDORE NAGAR PALIKA NIGAM v. RANNSINGH

7. DIVISIONAL FOREST OFFICER v. RAM PRASAD. and

In **UNION OF INDIA v. RASIK MUNDA.,** it was held that the contractor engaged by Railways to do railway work and the workmen were employed by the contractor and the workmen sustained injuries in the course of employment, Railways liable to pay compensation and entitled to be indemnified by the contractor.

In the light of the decisions referred to supra and also on a careful reading of the object of the Scheme of the Act of 1923, adjudication by the competent authority with respect to the disputed questions, would be essential. The learned counsel for the petitioner-company had taken a specific stand that the death was due to negligent Act of the Railways and the petitioner-company is in no way liable.

Apart from this aspect of the matter, absolutely there is no adjudication by the competent authority under the Act of 1923 and hence, the benefit available under Section 12(2) of the Act of 1923 cannot be invoked unless the said

procedure is followed. There is no factual controversy on the aspect relating to the fact that the dependents of the deceased never approached the competent authority and equally there was no adjudication in this regard at any point of time. In such circumstances, unless the procedure under the Act and the Rules had been followed and adjudication had been made in accordance with law, the respondents have no authority or right to effect any illegal, unauthorized or unlawful deductions from the bills of the petitioner-company. The said action definitely would be arbitrary, not authorized by law and lacks legal sanction and hence, such an action on the part of the respondents, definitely, cannot be sustained.

10. RELIEF GRANTED:-

In the light of the findings recorded supra, the writ petitioner is bound to succeed and accordingly, the writ petition is hereby allowed. But in the peculiar facts of the case, this Court directs the parties to bear their own costs.

_____

20th January, 2005

KVR

L.R.Copy to be marked: Yes.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday the twentieth day of January, two thousand and five.

_ _____

ASSISTANT REGISTRAR

20th January, 2005.

Kvr

// True Copy //

Section Officer

To

One fair copy to the Honourable Sri Justice P.S.Narayana, for his

lordship's kind perusal

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